

MINUTES

AUDIT SUBCOMMITTEE OF THE LEGISLATIVE MANAGEMENT COMMITTEE

The Audit Subcommittee of the Legislative Management Committee met in Room 303, State Capitol Building, Salt Lake City, Utah, May 18, 2004, from 3:15 p.m. until 4:45 p.m.

Committee Members Present:

Speaker Martin R. Stephens, Co-Chairman
President Al Mansell, Co-Chairman
Senator Mike Dmitrich
Representative Brent Goodfellow

Excused

Legislative Audit Staff:

Wayne L. Welsh, Auditor General
John Schaff, Deputy Auditor General
Rick Coleman, Audit Manager
Tim Osterstock, Audit Manager
Leslie Marks, Audit Supervisor
Darren Marshall, Lead Auditor
Sue Verhoef, Lead Auditor
David Gibson, Sr Performance Auditor
Deanna Herring, Sr Performance Auditor
Ivan Djambov, Sr Performance Auditor
Lynda Maynard, Recording Secretary

Other Interested Parties:

Dianne R Nielson, Ex Dir., Department of Environmental
Quality (DEQ)
Bill Sinclair, Deputy Director, DEQ
Steve Higley, Dir, Support Services, DEQ
Craig Silotti, Finance Dir, DEQ
Pam Russell, DPS
Jan Thompson
Dan Becker, State Court Administrator
Myron March, Deputy Court Administrator
Richard Schwermer, Asst Court Administrator
D Mark Jones, District Court Administrator
David Walsh, Dir of Budgets, CCJJ
Michael Kjar, Legislative Fiscal Analyst
Mark Bleazard, Legislative Fiscal Analyst
Bill Greer, Legislative Fiscal Analyst
Doug Smeath, *Deseret Morning News*

Richard Piatt, *KSL TV*

1. Call to Order

President Mansell called the meeting to order at 3:15 p.m.

2. Approval of Minutes

Senator Dmitrich made a motion that the minutes from the February 16th meeting be approved. The motion passed.

3a. A Performance Audit of the Department of Environmental Quality's Commercial Waste Facility Oversight

(Report #2004-06)

Presented by Darren Marshall, Lead Auditor

Regulatory oversight of hazardous and radioactive waste disposal in Utah appears to adequately follow safeguards for the health and safety of Utah's population. The Utah Department of Environmental Quality (DEQ) follows federal regulations and state laws as delineated in the **Utah Code**. There are, however, concerns with some questionable operating procedures and accessibility of information that may limit DEQ's program effectiveness.

The department's oversight of commercial waste disposal sites requires a complex organizational structure that must be capable of dealing with complicated regulations and site operations. Oversight is further complicated because environmental issues have always raised some degree of public concern. This concern begins with the very nature of DEQ's mission statement of both protecting the environment and aiding in economic development. This charge, combined with the unique ownership, waste streams, and history of one of the state's primary waste disposal sites, creates concerns. The concerns have been further fueled by a perceived lack of departmental administrative controls and, at times, a lack of readily accessible information.

This audit was requested by the Utah Hazardous Waste Regulation and Tax Policy Legislative Task Force. The task force requested that the Office of the Legislative Auditor General determine:

- If state-licensed radioactive, solid, and hazardous waste disposal facilities are regulated according to, and in compliance with, Utah statutory requirements.
- If Utah's regulatory requirements are adequate to provide effective management of state environmental concerns.
- If established fees are used in accordance with state statute and are sufficient for the department's operational needs.

DEQ Administrative Support of Waste Disposal Oversight Needs Improvement. The Department of Environmental Quality (DEQ) lacks a coordinated, written plan to guide its divisions' oversight of commercial waste disposal facilities. A clearly developed, risk-based, plan could better guide budgetary decisions. Such a plan should address fee fluctuations and the department's current reliance on the diminishing EQRA account. On a positive note, DEQ'S oversight of site financial assurances appears appropriate.

DEQ Should Review Adequacy of Funds to Improve Operational Efficiency. The department reported to the Hazardous Waste Regulation and Tax Policy Task Force that certain oversight activities are conducted annually when, in fact, during tight budget years they have not been performed. Adequate funding for future oversight of waste disposal programs is a concern that can be addressed, in part, with regular DEQ audits of waste disposal fees. Our review indicates that information gained in fee audits could increase revenues available for oversight programs. Improvements are also needed in information storage/retrieval management and information available for future fee setting.

1. We recommend the Legislature review the **Utah Code** outlining the EQRA account to clarify legislative intent.
2. We recommend the DEQ formalize its oversight plans and include prioritization, risk assessment and necessary funding levels.

Performance of DRC's Groundwater Oversight Program Raises Questions. Oversight of commercial waste disposal programs is in large part done by a variety of inspections and monitoring programs. We reviewed DRC's groundwater sampling assurance program and are concerned with: 1) well sample selection which has been cost-based not risk-based; 2) less frequent sampling than reported; and, 3) elimination or reduction of sampling as budgeted funds are used elsewhere.

Inspection Programs Appear Effective and Seem to Meet Current Health-safety Needs. DRC inspectors appear to be thorough and effective in addressing health-safety needs. DRC inspections have been broken down into manageable "modules" that have been approved for content and effectiveness by the NRC.

DSHW Can Improve Disposal Facility Oversight. In contrast to DRC inspections, DSHW does not utilize a written inspection plan. Rather, the division relies on the expertise of its staff. As a result, there is neither a formal risk assessment nor tracking of violation trends to guide DSHW activities.

1. We recommend the department ensure that its oversight plans are coordinated between divisions and kept current.
2. We recommend DRC establish formal policy and practice of a risk-based groundwater split-sampling program.
3. We recommend that DSHW design and implement written, uniform, annual inspection plans.
4. We recommend the Legislature study DSHW's penalties to determine appropriate maximum fine levels.
5. We recommend that DSHW sample treated waste to ensure that it meets treatment standards.

DEQ Administrative Controls Can Improve. Oversight functions can be improved with additional administrative control of information and improved fee collection from waste disposal facilities. Currently, DRC's lack of an integrated information system prevents easy access to information such as the tracking of notices of violations (NOVs). This concern has also been voiced by the NRC. Additional controls, primarily in fee collections, are necessary if the state is to fully collect the legislatively set fees. Our review found substantial under-payments. Clarification and improved policies regarding fee collections would better transmit legislative intent to the department and to the disposal site operators.

Fee Collection Regulations Need Clarification. Clarification of state statute and formalization of departmental policies could provide the state with increased revenues without changing the existing fee structure. As an example, facility operators have elected to either not follow or reinterpret state statute to reduce fee payments. The department was not aware of the altered practice of the facilities. In another instance, the department has used an informal policy to not collect all the legislatively established fees in cases where multiple fees apply.

1. We recommend that DRC create a position to maintain its information systems.
2. We recommend that the facilities submit monthly fee reports in a more user-friendly format.
3. We recommend that DEQ establish a commercial waste facility audit program to provide quality assurance for its regulatory program.
4. We recommend that the Legislature review **Utah Code** 19-6-118, regarding generator fees, and clarify its intent.

Discussion following presentation:

Dianne R. Nielson, Executive Director, Department of Environmental Quality (DEQ), presented the following in response to the DEQ Audit presented:

- DEQ appreciates the Legislative Auditor's efforts to evaluate and provide recommendations to strengthen their programs.
- As indicated in the audit, the regulation of hazardous and radioactive waste disposal in Utah appears to adequately follow safeguards for the health and safety of Utah's population.
- DEQ follows federal regulations and state laws as delineated in the **Utah Code**.
- The programming error, referenced in the DEQ audit, was on the part of the facility, not the department. The department's ongoing audits would have picked this up making it a temporary net loss, not a permanent net loss.
- The Department of Environmental Quality has the radiation control program audited every four years by the US Nuclear Regulatory Commission and the solid and hazardous waste program is audited by the Environmental Protection Agency annually.

Motion: Speaker Stephens made a motion that the **Performance Audit of the Department of Environmental Quality's Waste Facility Oversight** (Report #2004-06) be referred to the Hazardous Waste Regulation and Tax Policy Task Force and the Transportation, Environmental Quality and National Guard Joint Appropriations Subcommittee. The motion passed unanimously.

3b. A Performance Audit of the Administrative Office of the Courts

(Report #2004-05)

Presented by Leslie Marks, Audit Supervisor

The Judiciary Interim Committee of the Legislature requested an audit of the Administrative Office of the Courts (AOC) in April 2002 after conducting a Sunset (re-authorization) review of the agency. The request included AOC growth and judicial budget prioritization issues as well as issues of education costs, law clerk availability, and task force spending. We believe the Judicial Council can improve the effectiveness of the AOC; improving the information used in the Judicial Council's budgeting and prioritization decisions and addressing communication issues should improve the relationship between the AOC and the judges it supports.

The Judiciary, as one of the three branches of Utah government, is overseen by the constitutionally created Judicial Council, a policy body comprised of judges from each of the state court levels plus representatives of the locally funded Justice Courts and a representative from the Utah Bar Association. The Administrative Office of the Courts, as the staff support office, reports to the Judicial Council and is responsible for implementing the policy decisions made by the council. Although we were asked to review the AOC, the audit request included issues that fell into policy and governance areas, which are the purview of the Judicial Council; thus, some of the discussion in this report extends to the Judicial Council as well.

Summary information about each chapter's findings is provided below.

AOC's Growth Comparable to Rest of Judicial Branch: Based on how we defined the AOC and the historical data we were able to obtain, we estimate that from 1992 to 2002, expenditures increased 29 percent while staff increased by 53 percent. Some judges perceive that the AOC's growth has been excessive; although AOC growth was substantial during the 10 years, the office grew less than the Judiciary as a whole. Our assessment was complicated by the fact that the AOC is not a defined program budgeting and accounting unit, but it includes staff and activities funded through other Judiciary programs. The main differences between our data and those of the AOC can be explained by timing differences in the data used and some definitional differences in positions counted.

Prioritization Process Is Reasonable, But Better Information Is Needed: Some judges are concerned about the fairness of the Judicial Council's budget prioritization process. We found that the process used to prioritize the Judiciary's budget appears to be reasonable, but better information is needed for the process to function optimally. The Judiciary Interim Committee asked us to review how the Judiciary establishes funding priorities. Our concerns are not so much with the process itself as with the budget and expenditure information feeding into the process. This information includes the financial data discussed in Chapter II as well as the results of weighted caseload studies used when determining staffing needs. We believe that improvements can be made in budgeting and expenditure information, including the data that results from the weighted caseload studies, to aid the Judicial Council's budgeting and resource allocation decisions.

Law Clerks Ranked Lower Than Other Judiciary Needs: Although increasing the number of law clerks has been one of the top priorities of the Board of District Court judges in recent years, the Judicial Council has given other needs higher priority in its budget prioritization process. District Court judges overwhelmingly stated that additional law clerks would improve the quality and timeliness of court decisions. While we do not question the value of law clerks, the current law clerk-to-judge ratio shows that Utah is in relatively good shape when compared to nearby states.

Judicial Education Is Valuable But Costly: The Judiciary Interim Committee asked us to determine how much is spent on the education of judges and staff, in part because of concerns that non-essential classes were being provided while clerk jobs were being cut. As discussed in Chapter II, the Judiciary's budget is sometimes confusing. For example, in the education area we found that some costs to educate Appellate and District Court judges are paid through the Juvenile Court budget. Thus, the Judicial Education Program budget includes part but by no means all of the expense incurred to educate judges and staff. Including amounts from other program budgets, the AOC's Education Department spent about \$562,570 in fiscal year 2002. Added to the funds managed by the Education Department are expenses at the program and district level and the cost of

time not devoted to primary duties while in education activities.

Task Force Used Judiciary Resources: The AOC provided over \$72,000 in funds to the Racial and Ethnic Fairness Task Force and Commission through fiscal year 2003. From fiscal years 1997 through 2003, the task force and commission spent approximately \$546,800, while revenue totaled \$556,600 (including AOC contributions), for a balance of almost \$10,000. AOC staff indicate they did not spend all of the fiscal year 2002 state appropriation of \$60,000, which would account for much of the balance. Beyond cash resources, we were unable to identify the cost of employee involvement because task-specific timekeeping is not required at the AOC. We did find that studying racial and ethnic fairness issues is a relatively common activity among judiciaries nationally; studying bias issues seems to be a reasonable activity for Utah's Judiciary to pursue.

Allegations Were Reviewed But Not Substantiated: We reviewed a number of allegations that were brought to our attention by employees or former employees of the AOC. Our review failed to substantiate allegations of mismanagement or improper use of public funds.

Discussion following presentation:

Daniel J. Becker, State Court Administrator, responded to the audit of the Administrative Office of the Courts (AOC). Mr. Becker told the Audit Subcommittee that Chief Justice Christine Durham sends her regrets for being unable to attend the meeting and conveys her desire that the Audit Subcommittee members give appropriate appreciation to the role of the Judicial Council in terms of the governance of the court system. Mr. Becker further voiced Chief Justice Durham's feelings by saying that any discussion of the administration of the judiciary should be in the context of the charge set out for the Judicial Council by the state constitution.

Mr. Becker concluded his presentation by saying that the Administrative Office of the Courts has carefully reviewed all of the recommendations made in the audit and found them to be very solid and sound. Mr. Becker said that one of the things achieved by this type of audit is recommendations and ideas that improve the operation of an organization and the AOC is thankful for these. Further, all recommendations made that apply directly to the Administrative Office of the Courts either have been or are in the process of being implemented.

Motion: Speaker Stephens made a motion that the **Performance Audit of the Administrative Office of the Courts** (Report #2004-05) be referred to the Judiciary Interim Study Committee and the Executive Offices and Criminal Justice Joint Appropriations Subcommittee. The motion passed.

4. Audit Requests

Wayne L. Welsh, Auditor General, explained to the Audit Subcommittee the audit requests presently on the New Requests list. After the Audit Subcommittee discussed each request, the following motions were made:

Motion: Speaker Stephens made a motion that the request for an audit of the **Guardian Ad**

Item be approved and moved to the top of the Future Audits list. The motion passed.

Motion: Speaker Stephens made a motion that the request for an audit of the **Interscholastic High School Athletics** be placed in the number three spot on the Future Audits list. The motion passed.

Motion: Speaker Stephens made a motion that the request for an audit of the **State Office of Education Budgetary Procedures** and the **School Boards Open Meeting Act** be moved to the bottom of the Future Audits list above the audit requests on ' Hold '. The motion passed.

5. Adjournment

President Mansell adjourned the meeting at 4:45 p.m.